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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,330	12/11/2003	Anthony K. Hedley	OR-002	1345
27946	7590	03/09/2005	EXAMINER	
ARTHUR J. BEHIEL 6601 KOLL CENTER PARKWAY SUITE 245 PLEASANTON, CA 94566			BAXTER, JESSICA R	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/734,330

Applicant(s)

HEDLEY ET AL.

Examiner

Jessica R Baxter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10182004.4122004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,851,208 to Trott.

Trott discloses a surgical tool, the tool comprising: a. a conduit having a head end and a drive end, wherein the head end is adapted to removably attach to the cup (Column 2 lines 55-58); and b. a drive mechanism extending between the head end and the drive end (inner member 30), the drive mechanism rotating on a first axis at the head end and on a second axis on the drive end (Column 4 lines 16-20); c. wherein at least a portion of the drive mechanism rotates on a third axis at a first angle with respect to the first axis and a second angle with respect to the second axis, wherein the first and second angles are substantially equal, wherein the first and second axes are substantially parallel, a plurality of interlocking links extending through the conduit (links 50), wherein each of the links includes a male end (end 52) and a female end (end 54), wherein the male end includes a plurality of exterior facets and the female end includes a plurality of interior facets, wherein the exterior facets define a hexagon, wherein each link rotates along a link axis, and wherein the male end has a radius of curvature in a plane parallel to the rotational axis (the entire end is curved), wherein the female end has a second radius of curvature in the plane,

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and a bushing disposed within the female end of a first of the links and the male end of a second of the links.

Regarding the phrase “ for manipulating a joint replacement cup”, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. The device of Trott could be used to implant an acetabular cup if used with an acetabular reamer since Trott's device is intended to be used with different surgical cutting devices.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 13-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trott '208 in view of U.S. Patent No. 5,098,437 to Kashuba et al in

Trott discloses the claimed invention except for the acetabular cup and reamer surface. Trott discloses that his driving mechanism may be used on any surgical cutting tool (Column 4 lines 9-13). Kashuba discloses a surgical tool with a reamer surface (FIG. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Trott with the head end of Kashuba in order to provide a cutting device that includes an acetabular reamer and cup positioner.

Kashuba discloses a device comprising a joint-replacement cup including a threaded hole (recess 36), the surgical tool comprising: a. a conduit having a head end (cup 14) and a drive end (end 55); c. a head connected to the head end of the conduit, the head including: i. a cup (cup 14) attachment supporting the cup; and ii. a threaded attachment actuator having an attach state (FIG. 1, 3, 4) and a release state (FIG. 7, 8), the attach state securing the cup attachment to the cup and the release state releasing the cup; iii. wherein the actuator support transitions between the attach and release states without rotating with respect to the conduit (the attach and release states are controlled by flange 40), wherein the attachment actuator includes first and second jaws (plates 54) extending into the hole, wherein the attachment actuator further includes a wedge extending between the first and second jaws (insert 12), and wherein the attach state corresponds to a first wedge position and the release state corresponds to a second wedge position (Column 6 lines 47-57), wherein the hole comprises female threads (rim 56), and wherein the first and second jaws include partial threads (plates 54), wherein the partial threads engage the female threads in the first wedge position and disengage the female threads in the second wedge position (Column 6 lines 47-57).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica R Baxter  
Examiner  
Art Unit 3731

  
JRB

  
**ANH TUAN T. NGUYEN**  
**SUPERVISORY PATENT EXAMINER**

7/7/05